**OWNERS OF THE SHIP OR VESSEL "OSWEGO MERCHANT"**

**v.**

**THE OWNERS OF THE SHIP OR VESSEL "GREAT LOYALTY"**

HIGH COURT, SINGAPORE
FA CHUA J
[ADMIRALTY IN REM NO. 188 OF 1974]

***SHIPPING:*** *Shipping Law - Admiralty action in rem - Demise charter - Collision - Liability for damages agreed upon - Dispute as to the claim - Maritime lien - Meaning of "owners" - Whether demise charterers can be described as the "owners" - Sections 3, 4 High Court (Admiralty Jurisdiction) Act (Cap. 6).*

A ship named "Oswego Merchant", owned by Oswego Merchant Corp. was chartered to Gatx Oswego Corp. by a demise charter w.e.f. 17 February 1971. During the charter period a collision occurred on 15 July 1974 between "Oswego Merchant" and another ship "Great Loyalty" in the Singapore main strait. As a result the "Oswego Merchant" sustained damage and was repaired in Singapore.

By consent, both parties agreed as to the liability on the basis that the defendants to be blamed 65% and the plaintiffs 35%. The matter was referred to the Assistant Registrar for assessment of damages, which was awarded to the plaintiffs at S$4,590,333.92 with an interest of 11% from 1 January 1975. The award included claims for detention of Vessel and Crew's wages amounting to $1,235,749.59 and $117,961.75 respectively.

The defendants objected to the inclusion of these two claims in the award, contending that at the date of the institution of the writ, the plaintiffs were not in possession of the vessel and that the demise charterers were not the owners of the vessel for the purpose of this action. The writ in rem in this action was issued on 27 September 1974 in the name of "The owners of the ship or vessel Oswego Merchant" as plaintiffs and "The owners of the ship or vessel Great Loyalty" as defendants. The plaintiffs contended that in marine collision, where a maritime lien was erected it was quite common to sue in the name of the owners and that the word "owners" includes demise charterers.

**Held:**
The word "owners", when used in connection with limitation of a shipowner's liability, includes demise charterers and therefore the demise charterers ought to be treated as owners for the purpose of maritime lien.

*[Motion of the defendants dismissed with costs.]*

**Legislation referred to:**
High Court (Admiralty Jurisdiction) Act [Sing], ss. 3, (1)(d), 4, (2), (3)

**Other sources referred to:**
Thomas, *Maritime Liens, British Shipping Laws*, Vol. 14, para. 224
Guffie, *Admiralty Practice, British Shipping Laws*, Vol. 1, para. 156

*For the plaintiffs - Parasuram (D. Murphy with him)*
*For the defendants - Selvadurai*

**JUDGMENT**

**FA Chua J:**

The plaintiffs' claim in this case is for damages arising out of a collision which occurred on 15 July 1974, between their ship "Oswego Merchant" and the defendants' ship "Great Loyalty" in the Singapore main strait. As a result of the collision, the "Oswego Merchant" sustained damage and was repaired in Singapore.

On the 21 October 1980, liability for the collision was by consent adjudged between the parties on the basis of the plaintiffs being 35% to blame and the defendants being 65% to blame.

The assessment of damages was referred to the Assistant Registrar who awarded the sum of $4,590,333.92 and an interest rate of 11% to rum from 1 January 1975.

The defendants now by motion in objection apply to a Judge in Court to set aside the decision of the Assistant Registrar as to the damages in so far as the same relate to Items 15 and 18 of the plaintiffs' claim and to totally disallow those two items. Item 15 was for "detention of vessel" amounting to $1,235,749.59 and Item 18 was for "crew's wages" amounting to $117,961.75. The points of the objections are that Items 15 and 18 were not incurred or suffered by the plaintiffs at all and that they were items claimable, if at all, by the charterers or the "Oswego Merchant" and not by the plaintiffs and that the charterers are not parties to this action.

The relevant facts are these. The "Oswego Merchant" is owned by Oswego Merchant Corporation. By a demise charter dated the 17 February 1971, the vessel was chartered to Gatx Oswego Corporation. By Article 2(a) of the demise charter the "Demise charterer shall have the full use of the vessel and may employ the vessel as required to perform the time charters". Article 2 (b) provides:

> (b) Demise charterer shall have exclusive possession and control of the vessel and shall man, victual, navigate and operate the vessel at its own expense or by its own procurement throughout the charter period. The master, officers and crew of the vessel shall be engaged and employed by demise charterer and shall remain demise charterer's servants, navigating and working the vessel on behalf of and at the risk of demise charterer. The company shall not have any interest in any salvage moneys earned by the vessel or received by demise charterer.

The vessel at the date of the collision was under time charter to a third party. The writ in rem in this action was issued on 27 September 1974, in the name of "The owners of the ship or vessel Oswego Merchant" as plaintiffs against "The owners of the ship or vessel Great Loyalty" as defendants.

The contention of the defendants is that at the date of the institution of the writ on the 27 September 1974, the plaintiffs were not in possession of their vessel. The possession and control of the vessel had been transferred to the demise charterers who had the beneficial use of the vessel. The defendants submit that the demise charterers are not the owners of the vessel for the purposes of this action. The defendants say that Item 15, the claim for the detention of the vessel, must be the claim of either the time charterers or the demise charterers, it cannot be that of the plaintiffs. As regards Item 18 - crew's wages - that again is not a claim that can be raised by the plaintiffs since they did not employ the master and the crew and consequently they did not pay their wages.

The main issue here is whether the demise charterers are properly included in the description "The owners" as plaintiffs in the writ as held by the Asst. Registrar.

The contention of the plaintiffs before the Asst. Registrar was that in marine collision cases where a maritime lien was created it was usual to sue in the name of the owners and the word "owners" included also demise charterers. In support of this contention counsel for the plaintiffs cited two authorities - The *Father Thames* [(1979) 2 Lloyds Rep 364]; The *Ilos* (166 ER 1040)]. The Asst. Registrar was persuaded by these two authorities and he accepted the plaintiffs' contention and accordingly found that the plaintiffs were entitled to claim Items 15 and 18.

Before me counsel for the plaintiffs also relied mainly on The *Father Thames* and in particular upon the following passage in the judgment of Sheen J in which he said (at p. 370):

> The Merchant Shipping Acts
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> In *Sir John Jackson Ltd. v. The Owners of the S.S. Blanche* [1908] A.C. 126 the question which arose for decision was whether the word "owner" in s. 503 of the Merchant Shipping Act, 1894 which must apply to ships on demise charter and in which the word "owner" must be construed to include a charterer by demise, because on any other construction those sections would be absurd and irrational. Lord Atkinson refers to
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> > ... the special and temporary ownership possessed by a charterer by demise.
>
> That case lends support to the view that in maritime law when the context so requires the word "owner" includes a charterer by demise.
>
> Section 71 of the Merchant Shipping Act, 1906 was enacted to deal with the situation created by the decision of the lower Courts in that case the word "owner" did not include a charterer to whom a ship is demised. The decision of the House of Lords showed that that section was unnecessary.
>
> The decision that the word "owners" includes charterers by demise when that word is used in connection with limitation of a shipowner's liability lends support to the view that charterers by demise should be treated as owners for the purpose of a maritime lien.

Counsel for the defendants made the following comments on the decision in The *Father Thames* and submitted that I should not follow it:

(1) That case is not relevant in the issue in our case; there the owners of the vessel were the defendants and not the plaintiffs;

(2) In that case as a result of the collision that took place the vessel was subject to a maritime lien at the instance of the plaintiffs;

(3) All the references to the previous cases by Sheen J. where demise charterers were referred to as temporary owners of the vessel or owners *pro hac vice* are to be read with caution as pointed by Goff, J in the *I Congresso*, [ [1977] 1 Lloyd's Rep. 536 at p. 558 2nd column];

(4) For the purpose of the decision in The *Father Thames* it was not necessary to refer to the demise charterers as "owners" because, since there was a maritime lien that attached to the vessel in any event, the plaintiffs in that case could have proceeded against the vessel regardless of its ownership by virtue of the maritime lien.

I am unable to accept the submissions of Counsel for the defendants on The *Father Thames.*

The admiralty jurisdiction of the High Court is laid down by s. 3 of the High Court (Admiralty Jurisdiction) Act, Cap. 6 (the Act). The present action is concerned with matters which fall within para (d) of sub-section (1) of s. 3 and is not a claim to do with the ownership of a ship or forfeiture of a ship. Section 4 of the Act prescribes the mode by which the admiralty jurisdiction of the High Court may be exercised. Section 4(2) deals with claims to the possession or ownership of a ship or forfeiture of a ship. Section 4(3) deals with cases in which there is a maritime lien or other charge on any ship.

When damage or loss is caused to a vessel as a result of contributory negligence on both her part and that of another vessel, the existence of contributory negligence does not preclude the accrual of a maritime lien against the other vessel, (see Thomas, *Maritime Liens*, *British Shipping Laws* Vol., 14 para 224).

It is clear that in this case there is a maritime lien attaching to the "Great Loyalty" in respect of the damage done by her when she collided with the "Oswego Merchant" and consequently the jurisdiction of the Court may be invoked in this action by reason of s. 4(3) of the Act.

In a writ of summons in a collision action in rem, if the plaintiffs are the owners of the ship and are suing as such, it is usual to complete the line in the heading against the word "Plaintiffs" with the words "The owners of the vessel "X" and not to name them. Their address, however, is required by Order 6, Rule 4. This practice also permits several plaintiffs to sue collectively. For example, the master and crew of a ship often sue for lost effects, usually on the same writ as the owner, also without being named. The practice is often of particular value in cases of damage to cargo which may consist of parcels belonging to hundreds of plaintiffs (see Guffie, *Admiralty Practice, British Shipping Laws* Vol. 1 para 156).

*The Ilos* (166 E.R. 1040) was a case of damage, in which an action was brought in 1854 by Richard Redway, alleged to be the owner of the schooner *Jane Archibald* against the bargue *Ilos*. An appearance was entered by Tebbs for the owners of the *Ilos*. The Court pronounced for the damage and condemned Tebbs' parties and their bail in such damage, and ordered a reference to the Registrar as to the amount. When the parties came before the Registrar, Tebbs objected to the reference being proceeded with, asserting that he had that morning become aware that George Tanner was the registered owner of the *Jane Archibald* and not Richard Redway, in whose behalf the action had been entered; and that at the date of the collision in question, at the time the action was entered, and at the date of the interlocutory decree, George Tanner was the sole registered owner of the *Jane Archibald*. The reference was accordingly adjourned and Tebbs applied by motion to set aside the judgment against his parties. Dr. Lushington rejected the motion and directed the reference to be proceeded with, but stated that if after the damage had been ascertained, any doubt arose as to who was entitled to receive it, he should direct the amount to be paid into the registry and throw upon the party claiming it the onus of establishing his ownership.

After considering the submission of counsel for the plaintiffs and the authorities cited by him, I have come to the view that since the word "owners" included demise charterers when that word is used in connection with limitation of a shipowner's liability, demise charterers sought to be treated as owners for the purpose of maritime liens.

I found, therefore, that the word "owners" in this case includes the demise charterers.

The motion of the defendants is dismissed with costs.

Also found at [1982] CLJ 359